

5870
DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, U. S. C. 20548

FILE. B-188981

DATE: March 31, 1978

MATTER OF: Christ C. Popoff - Restoration of Salary Retention

DIGEST: Employee of Department of the Army requests that his salary retention rights under 5 U.S.C. 5337 be extended for 13 months, as he was not registered as a repromotion eligible until 13 months after receiving a downgrade due to the transfer of his former position. Section 5337 of title 5, United States Code limits salary retention without exception to 2 years. Request denied.

Lieutenant Colonel W. E. Murray, Chief, Finance Services Division of the Directorate of Finance and Accounting, Office of the Comptroller of the Army has requested an advance decision regarding the claim of Mr. Christ C. Popoff, an employee of the Department of the Army at Fort Sheridan, Illinois, for restoration of salary retention under 5 U.S.C. 5337.

The record shows that following a transfer of function Mr. Popoff, an Inventory Management Specialist, grade GS-14, step 8, with the Department of the Navy at Great Lakes, Illinois, was downgraded under reduction-of-force procedures and transferred to the Department of the Army at Fort Sheridan, Illinois, as a Management Analyst, grade GS-11, step 8. Mr. Popoff received salary retention rights for 2 years under the provisions of 5 U.S.C. 5337. Due to oversight, Mr. Popoff was not registered as a repromotion eligible employee until 13 months after his downgrade or 11 months before his salary retention rights expired. As a result of this omission, Mr. Popoff filed a grievance in which he requested inter alia an extension of his salary retention rights under 5 U.S.C. 5337 for 13 months. The grievance examiner did not rule on Mr. Popoff's request, as the Federal Personnel Manual at chapter 771, subchapter 3, paragraph 3-29(1)(h) precludes certain salary retention matters from consideration under agency grievance systems. Subsequently, Mr. Popoff submitted a voucher in the gross amount of \$8,377.31 representing the difference in salary between grade GS-14, step 8 and grade GS-11, step 8 for 13 months. It is this claim for which the certifying officer requests an advance decision.

B-188981

Section 5337 of title 5, United States Code, entitled "Pay Saving" provides in pertinent part as follows:

"(a) * * * an employee--

"(1) who is reduced in grade from a grade of the General Schedule;

* * * * *

"(4) who, for 2 continuous years immediately before the reduction in grade, served (A) in the same agency and (B) in a grade or grades higher than the grade to which demoted; * * *

* * * * *

is entitled to basic pay at the rate to which he was entitled immediately before the reduction in grade (including each increase in rate of basic pay provided by statute) for a period of 2 years from the effective date of the reduction in grade, so long as he--

"(A) continues in the same agency without a break in service of one work-day or more;

"(F) is not entitled to a higher rate of basic pay by operation of this subchapter or chapter 51 of this title; and

"(C) is not demoted or reassigned (i) for personal cause, (ii) at his request, or (iii) in a reduction in force due to lack of funds or curtailment of work."

The duration of salary retention is limited without exception to 2 years by the above-quoted statute. We are unaware of any

B-188981

other provisions of law that would permit extension thereof.
Accordingly, the voucher may not be certified for payment.

R. G. K... ..
Deputy Comptroller General
of the United States